Summary of Significant Appraisal Related Advice Letters

Toomey (A-81-187) – (basic rule) one San Francisco supervisor owned an apartment complex with 8 units and another supervisor owned one with 7 units. An ordinance in effect at the time restricted condominium conversions to 1,000 units per year. By June of 1981, applications had already reached the limit for that year and the following year. The city was considering an ordinance that prohibited any further condominium conversions unless the city's rental vacancy rate went over five percent. The city assessor stated that the condominium conversion ordinance would have no effect on the value of apartments because high interest rates made it difficult to sell condominiums and because of the high demand for apartments. He also stated that once an apartment is converted, its value goes up by at least 40 percent. One supervisor believed the value of his apartments would be affected by at least 10 percent while the other believed there would be no affect. **Advice Conclusion:** After quoting the regulation, and observing that the materiality figures were only guidelines and not binding, we advised "we *must* determine" (emphasis added) whether those guidelines are met here. Staff then determined that there would be no material effect because the supervisor would be unable to take advantage of any conversion until 1983 and neither of them intended to (both factors that were irrelevant to the affect of the present day value) and because the assessor said that it would not.

Angelo (I-87-217) – (basic rule) Mill Valley official owned home adjacent to or within 300 yards of five parcels considered for development under the revised general plan. One option would build nine houses on parcels adjacent to the commissioner's property. **Advice Conclusion:** After citing the basic rule and the guidance thresholds, we stated that we could not advise because we didn't know what the material effect would be and that "it may be difficult to calculate the monetary effect of the decision." We then advised in response to his question of whether he needed to hire an appraiser that "you do not have to hire an appraiser. A city or county tax assessor or a real estate broker probably can provide that type of information."

Phelps (A-88-429) – (2,500 foot/$10,000 materiality). La Canada Flintridge official owned home approximately 285 feet from property deeded to the city that was being considered for use as a museum. Official asked if obtaining an appraiser's opinion would be useful. **Advice Conclusion:** You have a conflict in real property decisions where the property is within 300 feet of your property unless you can establish that the decision will have no financial effect. "Should you or the city obtain a *real estate expert's* opinion that the decisions on the use of the [subject] property *could* have no financial effect on your home, you *would be able* to participate in the decisions regarding those uses. Conversely, determination by a real estate expert that decisions directly affecting the ... property *could* have any financial effect on the value of your home would require disqualification." (Emphasis added.)

Green (A-90-075) – (2,500 foot/$10,000 materiality). Sunnyvale official owned a residence just outside the boundaries of the "downtown development plan project." Project was divided into four segments per our previous advice that he may be able to participate in some parts, but not others, of the plan. The first three segments all were between 300 and 2,500 of the official's home. The fourth segment, which was to develop high-density residential, was within 300 feet. The official hired an appraiser to assess the potential financial impacts on his house. The appraiser stated that there would be no increase or decrease of $10,000 to the official's property from the first three segments of the decision but there would be a negative financial impact from the last segmented decision. **Advice Conclusion:** We advised that so long as the appraiser considered the factors in our regulation the official was "entitled to rely on the report's conclusion."

Steele (A-90-254) – (2,500 foot/$10,000 materiality). Official's property located 900 feet from "Moreno Highlands Specific Plan." The area of the proposed project was unimproved land on which the developer planned to build a 3,038 acre master-planned community consisting of approximately 554 acres of planned business center and 8,458 residential dwellings "linked together through a comprehensive network of parks, greenbelts, golf course and open space." No real estate appraiser used. **Advice Conclusion:** You have a conflict if there will be a $10,000 effect; your call.

Rodriguez (A-90-360) – (2,500 foot/$10,000 materiality). The decision was to expand an existing parking lot by constructing parking structure (increasing parking spaces from 88 to 212) within 2,500 feet of "numerous rental properties owned by the official." Appraiser concluded that it would not impact value of any of the official's properties. **Advice Conclusion:** You may participate if the financial effect of the decisions falls below the threshold; your call. **Note.** No analysis performed, the type of rental property was not described.

Moe (A-90-580) – (2,500 foot/$10,000 materiality). Woodland developer proposed 260 single family homes on lot sizes of up to 20,000 square feet as well as a small lake, a park, and significant open space recreational areas. Two public officials each own property within 2,500 feet of proposed development. Appraiser found that the project "will have no financial impact on the official's neighborhood but instead will have an overall affect on all similarly priced homes in the city." Homes in the official's neighborhoods range in price from $160,000 - $185,000. **Advice Conclusion:** Officials can participate if the impact falls below the financial thresholds; your call. We declined to evaluate the appraiser's opinion, but "to the extent that it is relevant, [it] is applicable [to the decision.]"

Stone (A-92-133a) – (2,500 foot/$10,000 materiality). Riverside was in the process of revising its general plan, which covered the entire city. An informational request was made (apparently by the city attorney) on behalf of all councilmembers with respect to potential conflict of interests concerning their real property interests. An appraisal was submitted that stated "It is conceivable that the mere adoption of a general plan could affect the value of the mayor's and/or councilmember's property interest ..." But it concludes that it "is not likely" the value of the councilmembers property would be

materially affected by the decisions. **Advice Conclusion:** Because the appraiser "has failed to apply" the standards set forth in our regulation, "his letter is insufficient for a determination of materiality."

Strauss (I-92-290) – (2,500 foot/$10,000 materiality). Fairfield considering an affordable housing project that will consist of townhomes at a density of 12-14 units per acre. The existing neighborhood within one-half mile contains single-family homes with a density of 4 units per acre. Four officials own homes within 2,500 feet of the project. Two studies were done to determine if "affordable and subsidized housing" has a significant effect on the value of nearby homes. Second study, which was site specific, concluded that the effect would be less than $10,000. **Advice Conclusion:** It is reasonably foreseeable that the project will have a financial effect on the official's properties. "Assuming that [the company] was qualified *to determine the values of the real property in issue* and determined, based on the provisions of Regulation 18702.3 that the pending decisions regarding the project *will have no material financial effect* on the official's real property interest," the determination will be considered a good faith effort to assess the materiality of the pending decisions. However, to "obtain written advice [... that] grants immunity ... *a written statement to the Commission declaring that there will be no material financial effect would be sufficient as long as* it is made clear that the Commission's materiality regulations have been applied in reaching this determination." The "immunity granted in such a letter only applies to the facts provided." **Note:** The letter states that the request for an immunizing letter must declare that there is "no material financial effect," when the applicable standard here is $10,000.

Kuperberg (A-92-430) – (2,500 foot/$10,000 materiality). Irvine official owns an interest in an office building, and the decision is to develop an 87 unit apartment complex within 1,500 feet of his property. Official's office building is in the Irvine Business Complex and located on Alton Parkway just off of Jamboree Road, a busy intersection. [It is about a 10 minute walk and just under a mile away walking or driving.] Using a "highest and best use" approach to determine that the official's office building was best used as an office building the appraiser used this determination as the sole basis for his conclusion that there would be no financial effect on the official's property by the decision. No other factors were considered in his consultation. **Advice Conclusion:** To the extent that the appraiser was qualified to make the determination and to the extent that he considered the factors in our regulation [he did not] his determination "will be considered a good faith effort to assess the materiality of the pending decisions."

Riggs (A-93-202) – (2,500 foot/$10,000 materiality). Clovis official owns a home 2,470 feet from CSU Fresno property on which development of 69 acres proposes an entertainment complex to "house a performing arts center, an arena, a baseball stadium, a convention center, theme/retail space, and parking. Appraiser determined that the proposed complex would not affect the value of the official's property. **Advice Conclusion:** We advised that "if an appraisal is performed by a person qualified to perform the appraisal, and it is determined, based on the Commission materiality regulations, that decisions will not have a material financial effect on the official's property, the official *may rely* on the determination." (emphasis added.)

Curley (A-93-482) – (2,500 foot/$10,000 materiality). Irwindale official owns numerous properties, including a residential rental, a tire business, and a Jack-in-the-Box within 2,500 feet of a planned 9-18 unit senior citizens housing complex. Appraiser states the project "will have no significant impact on the value" of any of the properties. No analysis is performed in this one and a half page letter. It does not even indicate how close the properties are or any conditions of the neighborhood. **Advice Conclusion:** He may participate if the financial effect is under $10,000 threshold; your call. The appraiser did not consider the factors in Regulation 18702.3, so reliance on his conclusion "would not be advisable."

Howard (A-94-329) – (2,500 foot/$10,000 materiality). Glendale official owns a commercial parcel that he leases to a billiard and arcade establishment. Proposed ordinance would put restrictions on these establishments, including prohibition within 700 feet of a school, within 700 feet of another similar establishment, and within the central business district. Two establishments currently located within central business district, official's is not, nor is it within 700 feet of a school. No report submitted by appraiser, but incoming letter states "I have discussed the issue of the arcade establishments with a *number of real estate professionals* who have indicated that, in their professional opinion, a 700 foot locational restriction for arcade and billiard establishments is of no economic consequence, i.e., it does not increase or decrease the value of the official's property or the leasehold to limit arcade or billiard establishments within 700 feet. **Advice Conclusion:** It is reasonably foreseeable that the decision will have a reasonably foreseeable financial effect on the real property and real property is directly involved. Official must disqualify unless there is no material financial effect. "Assuming that real estate appraisers are qualified to determine the values of real property in issue and determine that the decisions ... will have no material financial effect ... conclusions based thereon will be considered to be a good faith effort to access the materiality of the pending decision's on the official's real property interest."

Dixon (A-95-272) – (300-2,500 foot/$10,000 materiality). Laguna Nigel official considering decision to approve a 22 lot subdivision (some with ocean views) located on a 22 acre parcel located within 500-700 feet of official's residence on a lot with an ocean view. Development will require access over property of homeowners association where residence is located. Three opinions submitted by three different real estate appraisers. The first concludes that the "value of the subject is not effected (sic) either positively or negatively by the proposed ... development." This opinion is dismissed because it did not consider all of our factors. The second opinion concludes that "a market reaction in excess of $10,000 could occur" to the official's property. This opinion is referred to as an "undated opinion prepared for ... an opponent of the project." Its reliability is also questioned in the requesting letter where the city attorney states that it "specifically states that it is not an appraisal report .... We *were advised by the FPPC staff, ... that what was needed to determine the impact on the fair market value of the ... residence by the ... project was an actual appraisal report.*" (Emphasis added.) The third opinion stated that "[a]though the anticipated price competition ... may have a minor negative value influence ... any attempt of measurement would be speculative." It concluded that there

will be "no reasonably foreseeable financial effect upon the value of the ... property." Because this appraisal "at least evaluates the potential effect on the property ... utilizing the factors in [our regulation]" it is judged "by far the most thorough and convincing of the appraisals." **Advice Conclusion:** Based on the last appraisal, we advise that "the reasonably foreseeable effects on the [official's property] are not material."

Jackson (A-96-338) – (300-2,500 foot/$10,000 materiality). Menlo Park city councilmember owns home within 400 feet of a street that will need to be widened to accommodate a proposed $342,000,000 shopping center in neighboring Palo Alto. Both the street widening and the proposed construction are subject for the Coty of Palo Alto. Menlo Park is considering litigation involving the project. Appraiser says "the financial effect of the Stanford project on [the official's] property could not reasonably be made," and "the cost of such an appraisal ... might reach $10,000." **Advice Conclusion:** Your call.

Hentschke (A-97-058) – (within 300 ft. one penny). Solano Beach official owns home within 300 feet of proposed decision rezoning property from light industrial to medium high density single family dwelling. Appraiser states that the decision "will have no measurable financial impact," but also states that impacts will be "minor and represent minimal change." **Advice Conclusion:** Your call. **Note**: The appraisal report was good. It recognized, as few do, that the question "is whether a potential buyer would be willing to pay more or less for the property with the knowledge that the zone designation of the other property is changing." Some discussion is also provided as to the types of things that would cause an impact.

Kimbrell (A-97-201) – (within 300 ft./one penny & 300-2,500 foot/$10,000 materiality). Three Oxnard officials own property located within 96' 470' and 2,200' respectively of a proposed 320 acre project that includes a golf course, a club house, residences, churches, and parks. Appraiser concludes that the project "will have no measurable effect on the value of the subject single-family dwellings in the near or long term" and "no discernible or material effect on the value of the subject real estate." Councilmembers "do not know whether the analysis includes all appropriate factors or whether the conclusion reached by the analysis is objectively defensible. The councilmembers know of no facts that call into question the analysis or its conclusions, but the councilmembers, who are not real estate appraisers, are at a loss as to how to make further inquiry into whether the ... analysis is accurate and complete and objectively defensible." The request asks if legally required participation applies? **Advice Conclusion:** "The Commission cannot determine whether the financial effect of the decision on the official's real property will be material, because we are in no position to evaluate the accuracy of the appraisal. Ultimately, it is the responsibility of the public official who owns the property to ensure that the requirements of the Commission's materiality regulations are met."

Carvalho (A-97-227) – (300-2,500 foot/$10,000 materiality). Azusa official owns residence approximately 750-800 feet from site where council is considering the revocation of a conditional use permit for an in-patient/out-patient health care facility serving psychiatric patients on a now vacant building. Appraiser states that the economic

and any other impact on the property from the decision would be "negligible or at least minimum" since the property is not directly adjacent to or across from the site and that any changes to the value of the home would not be attributable to the decision. **Advice Conclusion:** We tell requestor that for the appraisal to be valid it "must consider whether it is reasonably foreseeable that the decision will result in a change in the character of the neighborhood by affecting such things as the traffic, view, privacy, intensity of use, noise levels, or similar traits." We do not explain how this is to be done for the revocation of a conditional use permit. We then quote the standard language that an appraisal can be used to show that a good faith effort was made to access the foreseeable material effect of a decision and that it will not be a violation to participate in the decision if the "appraisal is reliable and correct. Thus, if an official's reliance on the appraiser's opinion is unreasonable, the official may be in violation of the Act if he or she participates in the decision." We then go on to say, in effect, that we can't determine if the appraisal is accurate; your call.

Seligmann (A-97-561) – (300-2,500 foot/$10,000 materiality). Campbell official owns home 1,000 feet from the nearest boundary to a community center and city attorney asks if he can participate in decisions to implement the Community Development Master Plan? **Advice Conclusion:** Yes, he can participate "if he can reasonably rely on the appraisal." We also find that 'it is reasonably foreseeable that there will be a financial effect on [the official's] property considering the magnitude of the community center and its close proximity [sic] to his residence/property." However, there is no discussion or analysis of what the decision is in the one page request, the one-page appraiser's opinion, or the two-and-one-half page advice letter. It is an "A" letter in which we say a qualified yes, but also say that we 'cannot make the factual determination as to the potential financial effect on a public official's property or evaluate the accuracy of an appraisal."

Hardison (A-98-142) – (300-2,500 foot/$10,000 materiality). Azusa official owns residence 1,975 feet from the boundary of property planned for development of a 520 master planned residential community that will consist of approximately 24 residential neighborhoods, a commercial center, and over 240 acres of parks and open spaces. No appraisal submitted, but incoming request states that official received an appraisal that stated that "the economic and any other impact on my property from any decision regarding the project would not have any financial effect on [his] property..." **Advice Conclusion:** We cannot evaluate the accuracy of the appraisal letter. You must consider the factors in Regulation 18702.3(d). Your facts do not indicate if it does. If he did not consider those factors, reliance on his conclusion would not be advisable. If reliance of the assessment of the appraiser is reasonable, you may participate. If it is unreasonable, you may be in violation of the Act if you participate. "[O]nce you consider the factors in Regulation 18702.3(d) and any other relevant factors, if it is determined that the project decisions will not have a material financial effect on your property, you may participate in the decision;" your call.

Smith (A-98-151) – (within 300 foot /one penny). Santee official owns a single-family residence within 300 feet of property where the council will be considering development of a master planned community "covering 2,589 acres consisting of approximately 3,000

residential units with a hotel and golf course on the site. The development proposes no development of the property behind the councilmember's home. Rather, it designates that area as open space. A large natural topographical difference of approximately 100 feet between [the official's] property and the edge of the proposed development means that the two properties do not directly interface." **Appraisal**: The appraiser attempts to make his determination of "no financial effect" by comparison with home sales near a recently developed MPC in Chula Vista. "By comparing the relative rate of change in value of homes sold near to and distance from the new MPC, the appraiser will attempt to determine if there is a 'reasonably foreseeable' impact on the value due to proximity to the MPC." He does not discuss, or even indicate, any of the details involved in the Chula Vista properties., but does provide such information as "[t]he population correlation returns the covariance of two data sets divided by the product of their standards deviations" and "analysis was performed using linear analysis by using the 'ordinary least squares' method to fit a line through a set of observations." He then performs a regression analysis that "has an r-squared (adjusted) of 75.9. The r-squared value can be interpreted as the proportion of the variance in y explained by the variance in x. The adjusted r-squared is simply r-squared for *degrees of freedom* according to the formula r^2 (adj.) = 1 – (1r^2)(n-1/n-2)." **Advice Conclusion:** After citing a letter that says we "have advised that new development in a given area will have a reasonably foreseeable economic effect on surrounding property owners" we state that because his property is not directly involved the materiality standard is no financial effect only when property is within 300 feet (as it is). Therefore, there cannot be "any financial effect whatsoever," "not even one penny." (This is the first use of the "one-penny rule" connected with an appraisal.) "Commission regulations do not provide express guidance on how to apply the exception to the presumptive material effect contemplated by the final clause of subdivision (a)(1). In the past, we have suggested an approach that takes into consideration the factors described in regulation 18702.3(d)." (1) proximity and magnitude; (2) affect on development and income producing potential; and (3) character of the neighborhood – traffic, views, noise, air quality, etc. "Thus an independent appraisal taking into account the factors listed [above] and omitting no other pertinent factor, is appropriate evidence on which to rely when invoking the exception …"

Sanchez (I-98-267 & A-09-319) – (300-2,500 foot/$10,000 materiality). Salinas official owns residence approximately 500 feet from the boundaries of a proposed 853-unit residential subdivision on approximately 200 acres. Appraiser states that "new residential developments typically have a downward effect on homes in the area." His conclusion is that "the value of the subject property will not increase as a direct result of [the development.]" In the first letter, we state that the appraisal is not sufficient because it did not consider the factors listed in Regulation 18705.2(b)(4). Requestor then submitted a second request with an updated appraisal that considers those factors and also states that "[u]nder current economic conditions with record low interest rates and unemployment, demand in both existing neighborhoods and in new home tracts is so strong that it is not likely that the proposed project will by itself cause any significant change in values." **Advice Conclusion:** The appraiser's "conclusions that the decisions on the project appear to be objectively defensible. So long as it is otherwise reasonable to rely on the appraiser's opinions, [officials] … may rely on these letters in forming a

good faith belief that the project will not materially affect the value of their properties. However, each official must make the ultimate factual determination that the appraisals are reliable and correct, and that [the appraiser] is qualified to offer the opinions he has provided; your call.

Jenkins (A-99-153) – (300-2,500 foot/$10,000 materiality). Diamond Bar official owns residence approximately 1,500 feet from a state facility in an adjoining city that houses developmentally disabled persons. State is considering expanding the facility to include people who have committed serious felonies but who are not competent to stand trial. This would include additional fencing, guard towers, and security. The center is located near a residential subdivision, Little League field, and a YMCA. Residents of Diamond Bar are concerned and the city has instituted legal proceedings to challenge the expansion. Must an appraisal supporting a good faith determination consider the effects of comparable centers on comparable properties? Official asks if an appraisal must include "comparables." **Advice Conclusion:** The provision of Regulation 18705.2(b)(4) from the *"mandatory list of core criteria that must be considered in any appraisal."* Other than that, the Commission 'cannot provide you with specific advice on the appropriate contents of an appraisal…The Act does not require a theoretically exhaustive or perfect appraisal; in cases where a reliable opinion may be formed without information that would simply make the opinion more reliable, the official may elect to omit the additional information on grounds such as prohibitive cost, so long as that decision is reasonable under the circumstances." … the appraiser must use his or her professional judgment to decide whether information on 'comparables' is necessary to an appraisal on which a public official will rely."

Booth (I-99-193) – (within 300 foot/one penny). San Lorenzo official lives and operates a winery and vineyard on property adjacent to a 1,350 watershed owned by the district. Decision considers future uses of the property including possibly timber harvest, transferring it to the state park system to be incorporated with the adjoining state park, or other compatible uses. Appraiser states "[i]t would be foolish to make the statement that the Board Member's Property would absolutely not be affected by the adjacent use, because adjacent properties can have a substantial impact on the value of a property." However, "the general land use density in the area is so low and surrounding parcel sizes are so large that any legally permissible land use on a parcel would have a relatively insignificant impact on any adjacent parcel." **Advice Conclusion:** The official may not participate because of the "one-penny" rule.

Oderman (A-00-082) – (300-2,500 foot/$10,000 materiality). San Clemente official owns home approximately 880 feet from the Beachcomber property, a 2-wing single story bungalow-style motel with approximately 7,000 square feet of building area on just over an acre. Decision is to authorize redevelopment of the property by demolishing the existing motel and replacing it with 91 luxury hotel rooms, a 90-seat restaurant, and a spa facility, with a total proposed floor area of 69,423. Both an appraiser and a real estate broker separately conclude that there will be no financial affect on the official's property, (the appraiser based on the "distance and location" and the broker because of "the spa's projected 45-foot height"). **Advice Conclusion:** For

indirectly involved property the financial effect of the decision is material if it is $10,000 or more. To determine if it will affect the property, you must consider factors in our regulation. Others factors that are not mentioned, such as "comparables" are not required to be considered in every appraisal. Appraisal that considered these factors will be considered a good faith effort to assess the materiality. It is unclear if the appraisal considered the impact on the neighborhood from increased traffic, privacy or intensity of use. "We do not evaluate the accuracy of opinions prepared by real estate appraisers." You can participate if the opinion is a reasonable one "based on all relevant factors."

Vadon (A-02-080) – (500 foot /one penny rule). Dana Point official owns home within 500 feet of a 10 foot wide strip of land that the city is considering purchasing for use as a pedestrian walkway to a city park. City obtained real estate appraisal that, after considering all of our factors, concluded that the decision would not have any financial effect on the councilmember's property, but does not address the one penny rule. **Advice Conclusion**: Despite the "strict standard" of the one-penny rule, the councilmember does not have a conflict. The appraisal considered our factors, so if the councilmember "finds that the appraisal omits no pertinent facts" and the appraiser is qualified, it is evidence "on which to rely" in rebutting the presumption.

Raggjianti (A-02-170) – (500 foot /one penny rule). Larkspur city councilmember owns residence within 500 feet of subject of decision. Decision is to develop 17 acres, formerly used as a nursery, for single family housing, possibly to include affordable housing. Property boundary abuts a creek. On the other side of the creek are houses, which affront the street on which the official resides on the other side. Appraiser considered the factors in our regulation and determined that "the proposed … development will not have any financial impact on the values in the immediate neighborhood nor the value of [the official's] home. **Advice Conclusion:** After providing standard exculpatory language regarding appraisals, we made the call and said he could participate based on the findings of "the appraisal." **Note:** This illustrates the problem with the one penny rule. The appraiser actually stated that the decision would have no "financial impact on the values." Because real estate values are never measured in pennies, and cannot be, no appraiser is capable of determining a value down to a penny.

Van Hengel (A-02-183) – (500 foot /one penny rule). Santa Barbara official owns residence in neighborhood selected as test area for a program encouraging community involvement in transportation planning changes to "traffic behavior" including landscaping, sidewalks, street furniture, and driving measures with possibility of traffic calming. Appraiser states that "programs such as this are impossible to analyze to the point of identifying specific dollar amount impacts on each home." He then concludes that the decision will have "no measureable financial impact on any one individual residence." **Advice Conclusion:** Because the appraiser's finding "were not specific to your financial interest in your residential property" and because the appraiser did "not state if he conducted an appraisal examining the factors listed in regulation 18705.2(b)(1)(A-C), … [the appraiser] "did not render an appraisal upon which you can

rely for purposes of the Act. It does not appear that you can reasonably conclude that there will be no financial effect on your property."

***Carvalho (A-02-293, 294, & 314)** – (500 foot /one penny rule). Azusa officials all own homes within 500 feet of unimproved property on which a 520 acre master planned residential community consisting of approximately 24 residential neighborhoods, a commercial center, and over 240 acres of parks and open spaces. Real estate broker (not an appraiser) concludes that the project "will have no effect, financial or otherwise, on the public official's property." **Advice Conclusion:** Findings did discuss the reasons that there would be no effect such as the topographical features that isolate the project from their surrounding neighborhoods where the officials live and the fact that access will be from a different route so there will be little changes in traffic, and no changes in view or other characteristics of the neighborhood. Therefore, "if the officials individually find that the appraisal of their property omits no pertinent facts, reaches an objectively defensible conclusion, and that the involved appraiser is duly qualified the appraisal is appropriate evidence on which the official may rely when rebutting the presumption of a material financial effect," as from in our regulation. Your call.

Wallace (A-03-069) – (500 foot /one penny rule). Soquel school official lives within 500 feet of an elementary school that is well under capacity. The district middle school is over capacity. One solution suggested is to move the students from the under capacity elementary school to two other campuses and use the under-capacity elementary school to alleviate the crowding at the middle school. Some parents at the elementary school assert the official has a conflict of interest because she lives within 500 feet of that school. Real estate appraiser states that there will be no material financial effect on her property. **Advice Conclusion:** Her property is directly involved in the decision because it is 500 feet from the school, so the one penny rule applies. Not clear from the letter from the appraiser that it meets the criteria upon which immunity can be granted because it didn't consider the factors under our regulation.

Prussack A-(03-169) – (500 foot /one penny rule). Nevada City official owns residence within 500 feet of a proposed co-housing development. Real estate agent provides a letter stating that the decision will have no effect on the value of his property because he lives in a wooded area where he will not be affected by sight or sounds and ingress and egress to the development will be from two streets over. **Advice Conclusion:** We conclude that "reliance on an appraisal by a disinterested and otherwise qualified real estate professional, if based on an accurate understanding of the pertinent facts and circumstances, including the factors listed in [our regulation] *will generally suffice to rebut this presumption* (emphasis added). We stated that the appraisal could not be relied on here because it did not consider two of the factors in our regulation, (neither of which is relevant here). We also add that the official cannot rely on an appraisal without "inquiry into the qualifications of the appraiser." However, in this letter we state that he "has provided us a copy of a letter written by a qualified real estate appraiser," even though the letter was not prepared by an appraiser, but by a real estate agent, who's only

listed qualification was being "a realtor specializing in Nevada City property for 18 years." We provide no guidelines for what those qualifications are.

Wainwright (A-03-179) – (500 foot /one penny rule). Martinez official lives within 500 feet of city-owned property. The city is considering transferring a portion of that property to the owner (official's neighbor) of an adjacent parcel on which his residence is located. Appraiser states that "any boundary adjustment, lease or sale will have no financial impact whatsoever on your property or the properties bordering you, not even one penny." **Advice Conclusion:** Reasonable reliance on an appraisal by a disinterested and otherwise qualified real estate professional, if based on an accurate understanding of the pertinent facts and circumstances, including the factors listed in [our regulation], will generally be sufficient to rebut this presumption. The appraisal you provided was "written by a qualified real estate appraiser." When an official meets the standards (1) inquiry into qualifications of appraiser, (2) consideration of factors in our regulation, and 3) conclusions are objectively defensible, that is, based on a full and accurate assessment of all pertinent facts and circumstances as it appears you have done here, you may rely on the appraisal to rebut the presumption, but it is still your call, because we are not the finder of fact.

Bakker (A-06-070) – (500 foot /one penny rule). Town of Los Altos Hills official owns home on a one-acre parcel next to property owned by the town and used as a horse riding facility, including stables, a barn, and riding ring. Town is considering decisions including change of management policy giving the town more authority over the property, installation of a cell tower, restoring the barn, and developing an extensive system of pathways on the property. Appraiser concludes that "... after considering physical and visual impacts, and possible influences on property value in the surrounding area, we believe that [the official's] decisions related to the [subject property] will not have any financial impact on his property. **Advice Conclusion:** After providing standard language regarding the presumption of a material effect and rebutting the presumption, and that reasonable reliance on an accurate appraisal will be treated as a good faith effort, we state that if "the governmental decision will not have a reasonable foreseeable financial effect on [the official's property], the appraisal provides evidence that the general presumption has been rebutted." Your call.

Whitlock (I-07-025) – (500 foot /one penny rule). Hillsborough School Board official owns home approximately 350 feet of an elementary school. District is considering use of voter approved bond money for ADA upgrades and renovation of classrooms, including the addition of four classrooms, at the school. Appraisal report concludes that "renovation of the [school] would not have any financial effect on the subject property." **Advice Conclusion:** This letter provides all of the standard language: presumed to be material if even a one-penny effect; presumption can be rebutted by proof that there isn't a one-penny effect; this is a factual question that the official is ultimately responsible to decide; appraisal by a disinterested and qualified real estate professional based on an accurate understanding of all the pertinent fact and circumstances, including the factors in our regulation, will be considered a good faith effort to assess the financial impact, sufficient to rebut the presumption; but it can't be relied on without further inquiry into

the qualifications of the appraiser, whether they considered all the facts, including the factors in our regulation, and whether the conclusion is objectively defensible, i.e. based on a full and accurate assessment of all pertinent facts and circumstances. When this is done, an official may rely on the appraisal to conclude that the presumption has been rebutted. Your call, we do not act as a finder of fact.

Munoz (I-07-129) – (500 foot /one penny rule). Dana Point councilmember owns a townhome with a 1/296th interest in common area within 500 feet of the boundaries of the Specific Plan on which the council will be considering various decisions. Appraisal concluded that the interest in the common area "was found to have *no separate marketable value.* Therefore, any value increase or decrease created by the Town Center Project specifically to the sales price of the condominium unit, does not directly relate to value increase or increase [sic] to the common area." **Advice Conclusion:** "The appraisal does not consider all pertinent facts and circumstances, including those factors listed in [our regulation]. Furthermore, the appraisal stops well short of concluding that there will be no financial affect on [the official's] ... townhome."

Levin (I-08-179) – (500 foot /one penny rule). Sierra Madre official owns a single-family home on a 14,110 square-foot-lot located within 300 feet of a lot designated for open-space and within 500 feet of five other lots designated for single-family homes as part of a proposed development project that encompasses over 32 acres. The council with be faced with decisions related to this project, including application for development of the homes, modify the tract maps, increase or decrease density, conditional use permits, zoning variances, and zoning ordinances, among other matters. Appraisal concludes that the project "will not have a reasonably foreseeable financial effect on the market value" of the official's property. **Advice Conclusion:** The official has a conflict and may not participate in the decision unless the decision will not have any financial effect on the official's property. While the Commission does not act as a finder of fact when rendering advice, "we nevertheless reserve the right to review professional opinions submitted to us as part of advice requests to determine if they correctly apply Commission regulations and that the conclusion has some reasonable basis for support." Here we find that it does not. Upon review of the appraisal, it does not contain sufficient support for concluding that the decisions will not have a one-penny effect on the official's property.

Bunting (I-09-024) – (500 foot /one penny rule). Solano County Supervisor owns home with the back of the lot located approximately 120 feet from the proposed west entrance to a proposed 1,580-acre project to include "370 single-family residential units, divided into 356 single-family lots with a one-acre site minimum lot size and open space parcels and 14 agricultural and residential 20-acre lots. Requestor asks if an appraisal that establishes that the project will not have any financial effect on the supervisor's property be sufficient to rebut the presumption of materiality. **Advice Conclusion:** An appraisal would only provide evidence that the presumption has been rebutted. It must provide relevant and sufficient support for its finding. Given the facts here, we do not believe that it is possible for a competent appraiser to conclude that the project will not have any financial effect on the supervisor's property.

Bobak (A-10-036) – (500 foot /one penny rule). Yorba Linda official owns her residence located within 500 feet of each of two separate properties. One decision concerns redevelopment of a supermarket ranging from remodeling to a complete teardown and reconstruction. The other property, which is located behind the official's property, is being considered for redevelopment with "residential uses, a new fire station, commercial uses, or some combination thereof." Two appraisal reports were submitted that concluded that each decision "will have no effect, negative or positive," on the official's property. Each report was prepared on a standard URAR form typically used for bank financing and even contained statements that the "intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction." It also stated that it included an interior inspection of the official's home and included values of three "comparable" sales of other homes in the area to arrive at an opinion of value for the official's home. No explanation was given for why this was needed. A separate addendum was attached that attempted to address the issue, by considering the factors listed in our regulation and making its conclusion based on a consideration of these three factors. **Conflicts Determination:** We stated that the appraisals could not be used to rebut the presumption because, while they did consider the three factors in our regulation they did not consider all relevant factors, provided no analysis beyond those factors, and did not even discuss the primary determining factor – the one-penny rule.

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